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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,190	04/15/2004	Thomas P. Vickery	21384Y	9809
210	7590	10/20/2005	EXAMINER	
MERCK AND CO., INC P O BOX 2000 RAHWAY, NJ 07065-0907			GARBER, CHARLES D	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,190	Applicant(s) VICKERY ET AL.	
	Examiner Charles D. Garber	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 10-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Claims 1-9 in the reply filed on 10/05/2005 is acknowledged. The traversal is on the ground(s) that there is no undue burden. This is not found persuasive because there is a substantial burden. In this case the elected product as claimed can be used in a materially different process such as leak detection requiring Examiner to search in classes and subclasses different from those required for the method.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because "All numbers, letters and reference lines, appearing on the drawings, shall be simple and clear". Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

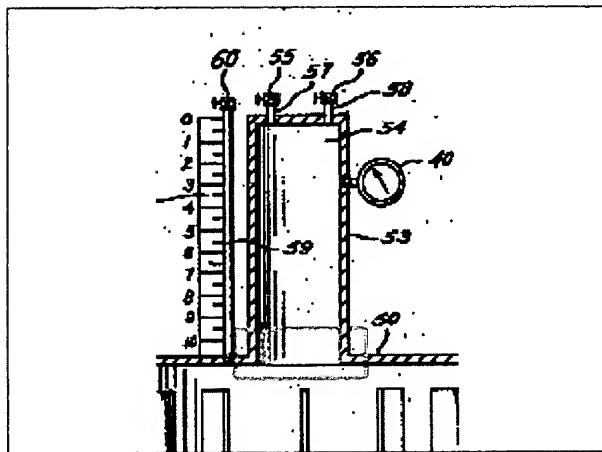
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers (US Patent 2,711,644).

Referring to Myers figure 3, container 10 is cylindrical vessel having openings at the top and bottom. It appears capable of holding a volume of a liquid capable of generating a gas.

The area highlighted below is a first port in cylinder 53. Gauge 40 is a pressure gauge which is a pressure reading means attached to a second port and valves 55 and 56 are valve means and pressure relief means respectively connected to third and forth ports in the cylinder 53. The cylinder may be considered to be a multi-port connector as in the instant invention.



Stuffing box 16, apparent in both of the Myers embodiments, may be considered a plugging means plugging the hole through which stirring shaft 15 passes in order to form a fluid tight seal.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 3, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers (US Patent 2,711,644).

Regarding claim 2, Myers discloses the claimed invention except for the container volume between 50 and 150 ml. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a container volume between 50 and 150 ml, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

As for claim 3, Myers discloses the claimed invention except for the container fabricated from 316 stainless steel or C-22 alloy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the container from 316 stainless steel or C-22 alloy, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As for claim 5, Myers discloses the claimed invention except for sensing pressure in the range from 0 to 60 psig. It would have been obvious to one having ordinary skill in the art at the time the invention was made to sense pressure in the range from 0 to 60 psig, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Myers (US Patent 2,711,644) in view of Sullivan et al. (US Patent 6598457)

Myers as applied above does not expressly teach the valve is a ball valve of stainless steel.

Sullivan, in a device measuring gas entrained in a liquid sample discloses a control valve 23 controls the amount of flow through an inlet 5. Sullivan teaches "Control valve 23 is preferably a ball valve, but may in the alternative include a diaphragm, butterfly, pinch, needle, gate, V-ball or iris control, or other suitable valve depending on application needs."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a ball valve as this type of valve is preferred for control of fluid. Though the reference do not expressly teach the valve is of stainless steel it would have been obvious to one having ordinary skill in the art at the time the invention

Art Unit: 2856

was made to make it from stainless steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers (US Patent 2,711,644) in view of Walles et al. (US Patent 3,578,404).

Myers as applied above does not teach pressure transducer or data logging software.

Walles teaches pressure sensing means 90 and intelligence processing means 140 which may be a computer "programmed to receive, store, and retrieve, such intelligence and deal with it in various ways" in the process of "ascertaining the rate of reaction that evolves...a gas". "By control under provided timing means, confined gas pressure is sensed in increments" towards determining "molar rate of reaction per mole of limiting reactant per unit time", "[o]ne of the more important characteristics of a chemical reaction...very difficult to determine".

It would have been obvious to one having ordinary skill in the art at the time the invention was made provide a pressure transducer and computer programmed so that pressure may be automatically monitored and recorded in order to measure pressure change as a function of time useful for determining chemical reaction rates in terms of moles.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 2856


The additional references cited on the accompanying form PTO-892 though not cited above are provided to indicate other prior art gas content measuring devices which include one or more features or limitations in common with the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cdg



CHARLES GARBER
PRIMARY EXAMINER